

**REMARKS**

This Amendment is being filed in response to the Office Action mailed October 20, 2005. Claims 9, 11, 12, 25 and 26 were allowed. Claims 1-8 and 13-24 were rejected. Applicant has amended Claims 1 and 14 herein.

**CLAIM REJECTIONS – 35 USC § 103 – CLAIMS 1-8 & 13-24**

During the November 30, 2005 interview between Examiner King and Applicant's counsel, Vic Lin, the rejection of Claims 1-8 and 13-24 under 35 U.S.C. § 103(a) was discussed. As indicated in the enclosed Interview Summary, both the examiner and Applicant's counsel agreed that Applicant's response to the final Office Action should include the following:

- 1) Revision to the claims to positively recite the water heater; and
- 2) Further information and details regarding dates of sales to confirm copying by competitor as evidence of non-obviousness.

Accordingly, Applicant has revised the claims to positively recite the water heater. As discussed in the interview, this revision has been made to emphasize the fact that Applicant's claimed invention is directed to water heaters only and that Applicant seeks patent protection not for restraint systems in general, but rather for security systems directed to water heaters alone.

Item No. 2 above relates to the secondary considerations of non-obviousness. Applicant has followed through with its promises made during the interview to strengthen the evidence of copying. In the enclosed Declaration, Applicant has attached copies of a trade journal which clearly show that its competitor's infringing

product entered the market after Applicant's sales of the patent pending product.

Accordingly, Applicant has clearly proven the fact that copying has occurred by its competition.

Copying a claimed invention is evidence of non-obviousness. *Diamond Rubber Co. v. Consolidated Rubber Tire Co.*, 220 U.S. 428 (1911). In the last response, Applicant included photocopies of the front and back sides of the packaging for the accused product. The front side touted the product as a "Soft Belt-Style Restraint." Thus, the accused infringer has touted the unique aspects of Applicant's claimed invention by emphasizing on the very first line of the front of the package that the restraint is soft, and belt-style, i.e., unlike a metal strap. Both the front and back sides contain "PATENT PENDING" notations on the bottom right hand corner. Thus, the non-obviousness of Applicant's claimed invention is further supported by the efforts of others to patent the same features.

### **SUMMARY**

Based on the above amendments and accompanying remarks, Applicant respectfully submits that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance. Applicant encourages the Examiner to telephone the undersigned attorney if it appears that a telephone conference would facilitate allowance of the application.

Application No. 10/728,709  
Art Unit 3632  
Preliminary Amendment  
Atty Docket No. LFF1.PAU.01

**Patent Application**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

January 20, 2006

by Eric Hoover



Signature

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Respectfully submitted,



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